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ABSTRACT

This pamphlet describes the educational rights of parents provided under provisions of the Individuals with Disabilities Education Act, including the amendments of 1997. It discusses rights in the following areas: (1) free appropriate public education; (2) prior notice to parents, including a list of the information required to be in a notice that the school must send if it is proposing or refusing to change a child's program; (3) parent consent, which requires written permission before conducting a preplacement evaluation, reevaluation, or placement in special education programs; (4) independent educational evaluation, which allows parents to require an independent evaluation if they disagree with the school's evaluation of their child; (5) educational surrogate parents; (6) student records, which allows parents to see or request copies of their child's school records; (7) mediation; (8) discipline, which describes the unique procedures and safeguards for disciplining children with disabilities; (9) state complaint procedures; (10) impartial due process hearings; and (11) private school placement. To increase understanding, after each main topic there is a highlighted box that explains parents' rights in plain language. The pamphlet ends with a summary of parents' rights. (CR)

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# EDUCATIONAL RIGHTS OF PARENTS

*Under Provisions of the Individuals with Disabilities Education Act including the Amendments of 1997 (Special Education)*

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OFFICE OF INDIAN EDUCATION PROGRAMS
BUREAU OF INDIAN AFFAIRS

October 1997

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## INTRODUCTION

This pamphlet describes parent educational rights required under federal and state special education rules and regulations. It is important that you, as a parent, understand your rights in special education relating to your child.

These procedural rights are also available for students with disabilities who have reached the age of maturity under state law and have not been determined to be incompetent.

School staff are available to assist you in understanding these rights and are available on request to provide you with any further explanation. If needed, the school will provide an interpreter or translation to help assure that you understand.

TO INCREASE YOUR UNDERSTANDING, AFTER EACH MAIN TOPIC IS A BOX THAT EXPLAINS YOUR RIGHTS IN PLAIN LANGUAGE.

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If you have any questions or would like further information please contact:

Name _____ Telephone _____

**NOTE**

*Parents whose language is other than English will need to be provided an oral or written translation in their native language.*

## AN EXPLANATION OF PROCEDURAL SAFEGUARDS AVAILABLE TO PARENTS OF CHILDREN WITH DISABILITIES

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### FREE APPROPRIATE PUBLIC EDUCATION

You have a right to participate in meetings with respect to the identification, evaluation, Individual Education Program planning, placement, and the provision of a free appropriate public education of your child. Your child's general education teacher should be involved with the IEP development.

**PLAIN LANGUAGE**

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**FREE APPROPRIATE PUBLIC EDUCATION**

*An eligible child with a disability has a right to receive a free appropriate education that is outlined as an Individualized Education Program. The program is meant to address your child's unique needs.*

### PRIOR NOTICE TO PARENTS

The school must provide you with written prior notice each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to the child.

**The notice must include:**

1. A full explanation of all of the procedural safeguards available to you in your native language;



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2. A description of the action proposed or refused by the school, an explanation of why the school proposes or refuses to take the action, and a description of any options the school considered and the reasons why those options were rejected;

3. A description of each evaluation procedure, test, record, or report the school uses as a basis for the proposal or refusal;

4. A description of any other factors which are relevant to the school's proposal or refusal; and

5. Sources for you to contact to obtain assistance in understanding the provisions of special education.

If you need assistance in understanding your procedural safeguards or anything else relating to your child's education, please contact the school principal of your local school.

A copy of your procedural safeguards will be available at a minimum a) upon the initial referral for evaluation b) upon each notification of an IEP meeting or reevaluation of your child, and c) upon a request from the agency for an impartial due process hearing.

The notice must be written in language understandable to the general public, and provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, the school must take steps to ensure that the notice is translated orally or by other means to you in your native language or other mode of communication so that you understand the content of the notice, and that there is written evidence that these requirements have been met.



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**PLAIN LANGUAGE**

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**PRIOR NOTICE**

*The school will notify you by phone or letter if they are proposing to change or refuse to change your child's program. The notice must be simple and easy to understand. You must also receive notice about meetings about your child in a reasonable time so you can attend.*

## PARENT CONSENT

The school must obtain your consent before conducting a preplacement evaluation, initial placement, and reevaluation of your child in a program providing special education and related services. Except for preplacement, evaluation, initial placement and reevaluation, consent may not be required as a condition of any benefit to you or your child. The school may require parental consent for other services and activities.

Written information regarding consent will be in the parents' native language or other mode of communication. You should understand the reason written consent is being asked and understand that your consent can be revoked at any time.

The school may use the federal or state procedures for due process hearings to determine whether your child may be evaluated or initially provided special education and related services without your consent, subject to your rights to appeal the decision and related services without your consent, subject to your rights to appeal the decision and to have your child remain in his or her present educational placement during the pendency of any administrative or judicial proceeding.

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**PARENT CONSENT**

***Your written permission is required before your child is first evaluated, reevaluated, and placed in special education programs.***

## INDEPENDENT EDUCATIONAL EVALUATION

You have the right to an independent educational evaluation at public expense for your child if you disagree with an evaluation obtained by your school. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the agency. The school will provide, upon your request, information about where an independent educational evaluation may be obtained. However, your school may initiate a due process hearing to show that their evaluation is appropriate. If the final decision is that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by your school in any decision made with respect to the provision of a free appropriate public education to your child, and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualification of the examiner,



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must be the same as the criteria which the school uses when it initiates an evaluation.

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**INDEPENDENT EVALUATION**

*If you disagree with the school's evaluation of your child, you can request an independent evaluation, conducted by someone other than the school staff.*

## EDUCATIONAL SURROGATE PARENTS

Each school shall ensure that an individual is assigned to act as an educational surrogate for a child whenever the parents of a child are not known and/or the school cannot, after reasonable efforts, locate the parents; or if the child is a ward of the State under the laws of the State. The school must have a method for determining whether a child needs a surrogate parent, and for assigning a surrogate parent to the child.

The person assigned as the educational surrogate parent may not be an employee of the state, or any other agency that is involved in the education or care of the child.

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education.

**PLAIN LANGUAGE**

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**EDUCATIONAL SURROGATE PARENTS**

*Some children do not have parents to represent them in educational matters. A surrogate parent is someone appointed by the school to represent the child at school meetings.*

## STUDENT RECORDS

### ACCESS TO RECORDS

Your school must permit you to inspect and review any education records relating to their child with respect to the identification, evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child, which are collected, maintained, or used by the school under special education. The school must comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, and placement of your child, and in no more than 45 days after the request has been made.

Your right to inspect and review education records under this section includes:

1. The right to a response from the participant agency to reasonable requests for explanations and interpretations of the records;
2. Your right to have your representative inspect and review the records; and
3. Your right to request that the school provide copies of the

records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school may presume that you have authority to inspect and review records relating to the child unless the school has been advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

The school must provide you on request a list of the types and locations of education records collected, maintained, or used by the school.

FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

The school may not charge a fee to search for or to retrieve information under this part, but may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

RECORD OF ACCESS

The school must keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participant agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in education records col-



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lected, maintained, or used under this part is inaccurate, misleading or violates the privacy or other rights of your child, you may request the school that maintains the information to amend the information.

The school must decide whether to amend the information in accordance with your request within a reasonable period to time of receipt of the request. If the school decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

The school shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of other privacy or other rights of the child.

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform you in writing.

If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it must inform you of the right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school, if the records of the child or the contested portion is disclosed to the party.



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**PLAIN LANGUAGE**

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**STUDENT RECORDS**

*You have the right to see or request copies of your child's school records. If you disagree with items in the records, you can ask if they can be changed or removed.*

## MEDIATION

There might be times when you and the school disagree on important issues regarding your child's education. If agreement cannot be reached, you have the right to request an impartial mediator to help resolve the issue(s). It is important for you to know that mediation is voluntary, conducted by a qualified/ impartial mediator at no cost to you. Mediation cannot delay or deny your right to a due process hearing. The process could result in a written mediation agreement that outlines the resolution to the differences. Discussions during mediation are confidential and may not be used as evidence during a due process hearing or civil proceedings.

**PLAIN LANGUAGE**

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**MEDIATION**

*Mediation is an effective way to resolve differences with the school. Mediation is free and conducted by someone not employed by the school.*

## DISCIPLINE

Discipline issues relating to students with disabilities are very complicated. Additional information, besides what is listed below, can be obtained from the school administrator or IEP Team.

1. Short term suspensions may be imposed for discipline infractions for not more than 10 days during the school year;
2. Before or not later than 10 days after taking disciplinary action, the IEP Team should meet to develop an assessment plan to address the problem behavior or review the plan if it had to be developed.
3. Disciplinary actions of more than 10 days require the IEP Team, including the parent, to conduct a manifestation determination. This process will determine if there is a relationship between your child's behavior and the disability;
4. If your child is expelled (removed from school) or placed in an alterative educational setting, your child must still be provided services and modifications described in the current IEP; and
5. A child with a disability can be placed in an interim alternative setting for up to 45 days if the child brings a weapon to school, is in possession of or using illegal drugs, and/or sells or solicits a controlled substance. This decision is made by the IEP Team, including the parent.

**PLAIN LANGUAGE**

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**DISCIPLINE**

*Discipline is an important part of learning. The IEP Team, including the parent, needs to determine appropriate disciplinary procedures for students with disabilities.*

## STATE COMPLAINT PROCEDURES

You have a right to file a written complaint with the BIA Office of Indian Education Programs (OIEP) if you feel the agency has violated a requirement of special education regulations. The complaint must be filed in writing to the OIEP explaining the alleged violations. The OIEP will have 60 calendar days after the complaint is filed to:

1. Carry out an impartial investigation;
2. Give the parent an opportunity to submit additional information about the allegations;
3. Give the school an opportunity to submit additional information about the allegations;
4. Review all the information and make an independent determination of whether a violation as occurred;
5. Issue a written decision to the school and parent of the findings, conclusions, timelines, and reasons for the final decision.

The school is obligated to implement the final decision in an efficient and timely manner.



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To file a written complaint, send to the: BIA Office of Indian Education programs, 1849 C Street, N.W. , Washington, DC, 20240.

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**STATE COMPLAINT PROCEDURES**

*If you feel the school is violating special education requirements for your child, you can file a written complaint to the BIA Office of Indian Education programs to resolve the problem.*

## IMPARTIAL DUE PROCESS HEARING

You or the school may initiate a due process hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education.

Before a hearing is initiated, you or your attorney must provide written notice to the agency, providing the following information:

1. Name of your child;
2. Address of your child;
3. Name of school your child is attending;
4. Description of the problem(s), including as many facts as possible; and
5. Proposed resolution to the problem.

The agency will have a form available for you to use to file the written notice.

At least five business days before a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing.

The hearing will be conducted by the agency directly responsible for your child's education.

The agency must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or you or the school initiate a due process hearing.

The hearing cannot be conducted by an employee of the agency or school involved with the education of your child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (A person who otherwise qualifies to conduct a hearing is not an employee of the school solely because he or she is paid by the school to serve as hearing officer.)

Each agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Each agency shall ensure that a final hearing decision is reached and mailed to the parties within 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

A hearing officer may grant specific extensions of time beyond the timelines above at the request of either party.

The decision made in a due process hearing is final, unless a party to the hearing appeals the decision under the procedures for impartial administrative appeal described below.

### DUE PROCESS HEARING RIGHTS

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals



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with special knowledge or training with respect to the problems of children with disabilities.

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

4. Obtain a written or electronic verbatim record of the hearing;

5. Obtain written findings of fact and decisions. (After deleting any personally identifiable information, the agency shall transmit those findings and decisions to the State advisory panel and make them available to the public.)

You must be given the right to have your child present, and to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

### ADMINISTRATIVE APPEAL: IMPARTIAL REVIEW

Any party aggrieved by the findings and decision in the hearing may appeal to the OIEP.

If there is an appeal, the OIEP shall conduct an impartial review of the hearing. The official conducting the review shall:

1. Examine the entire hearing records;

2. Ensure that the procedures at the hearing were consistent with the requirements of due process;

3. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above apply;

4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

5. Make an independent decision on completion of the review; and

6. Give a copy of written findings and the decision to the parties. (After deleting any personally identifiable information, the OIEP will transmit those findings and decisions to the State advisory panel and make them available to the public.)

Each review involving oral arguments must be conducted at a time and place which is reasonably convenient to you and your child.

The OIEP shall ensure that a final decision is reached in an administrative review and mailed to the parties within 30 days after the receipt of a request for a review, unless the reviewing official grants a specific extension at the request of either party. The decision made by the reviewing official is final, unless a party brings a civil action under the procedures described below.

### CIVIL ACTION

Any party aggrieved by the findings and decision made in an administrative review has the right to bring a civil action in State or Federal Court.

### CHILD'S STATUS DURING PROCEEDINGS

During the pendency of any administrative or judicial proceeding regarding a complaint, unless you and the agency agree otherwise, your child must remain in his or her present educational placement.

If a hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings.



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### AWARD THE ATTORNEYS' FEES

In any action or proceeding brought under the Individuals with Disabilities Education Act, the court may award reasonable attorneys' fees to the parents or guardians of a child or youth with disabilities who is the prevailing party.

Attorney fees may not be awarded relating to any meeting of the IEP Team unless such a meeting is convened as a result of an administrative proceeding or judicial action.

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**IMPARTIAL DUE PROCESS HEARING**

*On rare occasions, you might disagree with the special education testing, services or placement for your child. Try to resolve your disagreements by requesting mediation, which is a free service. A mediator is a neutral person who tries to resolve differences between you and the school. If no agreement is reached, ask the school how to file for a due process hearing. Please have the school explain the process before you make a final decision.*

## PRIVATE SCHOOL PLACEMENT

If the parents of a child with a disability, who previously received special education and related services from the local agency, enroll their child in a private school without the consent of, or referral from the school, a court or due process hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds the



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school had not made a free appropriate public education available prior to the private school placement.

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**PRIVATE SCHOOL PLACEMENT**

*Parents who place their child in a private school without the school's endorsement, could be awarded reimbursement for private school educational costs if a court or hearing officer determines that the local school was not providing a free appropriate public education.*

## SUMMARY OF PARENT RIGHTS

### FREE APPROPRIATE PUBLIC EDUCATION

*An eligible child with a disability has a right to receive a free appropriate education that is outlined as an Individualized Education Program. The program is meant to address your child's unique needs.*

### PRIOR NOTICE TO PARENTS

*The school will notify you by phone or letter if they are proposing to change or refuse to change your child's program. The notice must be simple and easy to understand. You must also receive notice about meetings about your child in a reasonable time so you can attend.*



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### PARENT CONSENT

*Your written permission is required before your child is first evaluated, reevaluated, and placed in special education programs.*

### INDEPENDENT EVALUATION

*If you disagree with the school's evaluation of your child, you can request an independent evaluation, conducted by someone other than the school staff.*

### EDUCATIONAL SURROGATE PARENTS

*Some children do not have parents to represent them in educational matters. A surrogate parent is someone appointed by the school to represent the child at school meetings.*

### STUDENT RECORDS

*You have the right to see or request copies of your child's school records. If you disagree with items in the records, you can ask if they can be changed or removed.*

### MEDIATION

*Mediation is an effective way to resolve differences with the school. Mediation is free and conducted by someone not employed by the school.*

### DISCIPLINE

*Discipline is an important part of learning. The IEP Team, including the parent, needs to determine appropriate disciplinary procedures for students with disabilities.*

### STATE COMPLAINT PROCEDURES

*If you feel the school is violating special education requirements for your child, you can file a written complaint to the BIA Office of Indian Education programs to resolve the problem.*

### IMPARTIAL DUE PROCESS HEARING

*On rare occasions, you might disagree with the special education testing, services or placement for your child. Try to resolve your disagreements by requesting mediation, which is a free service. A mediator is a neutral person who tries to resolve differences between you and the school. If no agreement is reached, ask the school how to file for a due process hearing. Please have the school explain the process before you make a final decision.*

### PRIVATE SCHOOL PLACEMENT

*Parents who place their child in a private school without the school's endorsement, could be awarded reimbursement for private school educational costs if a court or hearing officer determines that the local school was not providing a free appropriate public education.*



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